

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-5918**

**PETITION OF ALAN J. LO RE AND HELEN LUCY HARVEY**

OPINION OF THE BOARD  
(Hearing held September 17, 2003)  
(Effective Date of Opinion: February 3, 2004)

Case No. A-5918 is a petition filed pursuant to Section 59-A-4.11(b) of the Montgomery County Zoning Ordinance (Chapter 59, Montgomery County Code, 1994, as amended) by Alan J. Lo Re and Helen Lucy Harvey (the "Petitioners") for a variances from (i) Section 59-C-1.326(a)(2)(C)(3) to reduce the required ten (10) foot setback from the side lot line to 3.5 feet, and (ii) Section 59-C-1.323(a)(B)(3) to reduce the required ten (10) foot setback from the rear lot line to 1.5 feet, for an existing two-story garage.

The subject property is identified as Lot 1, Block A, Rock Creek Park Village Subdivision, and is located in the R60 Zone at 3508 Inverness Drive, Chevy Chase, Maryland 20815, Tax Account No. 004438231 (the "Property").

Pursuant to Section 59-A-4.4 of the Zoning Ordinance, the Board held a public hearing on the petition on September 17, 2003. The Petitioners testified in support of the petition. No one testified in opposition to the petition.

Decision of the Board: Requested variances **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The Property is a quadrilateral-shaped lot consisting of about 5,594 square feet. The Property is located on the south side of Inverness Drive near its intersection with Spring Hill Lane. The Property has about 60 feet of frontage on Inverness Drive. The Property is 100 feet deep and narrows toward the rear, where the rear lot line is 51 feet wide.

2. The Property is improved with a two-story, brick dwelling that is about 34 feet wide and 40 feet deep. The house fronts on, and is situated about 25 feet from, Inverness Drive. Vehicular access to the site is gained via a paved driveway that runs along the east side lot line to a two-story garage located in the southeast corner of the lot. The garage is approximately 18 feet wide and 22 feet deep. It is situated 1.5 feet from the rear lot line and 3.5 feet from the east side lot line. The garage was built in 1994 and conformed to the zoning setbacks in existence at that time. When the setbacks changed in 1997, the garage became a nonconforming structure (Exhibit 1A).

According to the Petitioners, the topography of the Property rises about two feet from the rear of the house to the rear lot line.

3. The zoning vicinity map (Exhibit 7) shows a variety of lot sizes and shapes in the vicinity of the Property. While the Property is smaller than most of the lots in the subdivision, it is larger than some (e.g., Lots 2 and 3). The rear of the Property is narrower than several lots to the east, but is approximately the same width as the adjacent Lots 2 and 3 and several lots across Inverness Drive to the north (e.g., Lots 7, 8, 11, and 12). The Property's back yard is wider than that of Lot 10 across the street.

4. The Petitioners propose to convert the existing two-story garage into a guest house to accommodate extended stays from Mr. Lo Re's parents.<sup>1</sup> The conversion will not involve expansion of the building nor changes to its exterior, but will require permits for interior renovations.<sup>2</sup>

### **FINDINGS OF THE BOARD**

Based upon the Petitioners' binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements of Section 59-G-3.1 as follows:

*(A) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

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<sup>1</sup> A "guest house," which is "a detached dwelling that is intended, arranged or designed for occupancy by transient, nonpaying visitors," is permitted as an accessory use in the R-60 zone. Section 59-A-2.1; Section 59-C-1.31(a).

<sup>2</sup> Section 59-G-4.12 requires that whenever any nonconforming structure is "altered, renovated or enlarged," the construction must conform the structure to the zoning requirements in effect at the time of construction. The Department of Permitting Services has determined (see Exhibit 1A) that the Petitioners' planned interior renovations are such that Section 59-G-4.12 applies - a conclusion we will not disturb.

The Petitioners have failed to show any peculiar, exceptional, or extraordinary condition of the Property that causes a practical difficulty in locating a guest house in compliance with the required 10-foot side and rear setbacks. The Petitioners first contend that the size and narrowness of the Property are exceptional conditions peculiar to the Property because they are different from many of the vicinal properties. As the Maryland courts have advised, however, the Auniqueness@<sup>3</sup> prong of the variance test has a rather specialized meaning:

The Aunique@ aspect of the variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. AUniqueness@ of a property for zoning purposes requires that the subject property have an inherent characteristic *not shared by other properties in the area*, i.e. its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restriction imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

North v. St. Mary's County, 99 Md. App. 502, 514, 638 A.2d 1175 (1994) (italics added).

The Board finds that the Property's size, while small relative to some vicinal lots, is larger than others, including two neighboring lots, and it is equivalent in size to many other lots in neighboring blocks. Likewise, the rear of the Property may be narrower than many of the lots to the east, but it is wider than or the same width as the adjacent lots and several lots across the street.<sup>4</sup> In other words, the size and narrowness of the Property, while different from some vicinal properties, are nevertheless shared by many other properties in the area. Consequently, we cannot conclude that the size or narrowness of the Property is exceptional or peculiar to this specific parcel within the meaning of Section 59-G-3.1(a).

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<sup>3</sup>The Zoning Ordinance=s Apeculiarity@ requirement is synonymous with Auniqueness.@ See Umerly v. Peoples=s Counsel, 108 Md. App. 497, 506, 672 A.2d 173, 177 (1996).

<sup>4</sup>The Petitioners failed to introduce into the record any information regarding the relative size and widths of neighboring lots. Consequently, the Board relied upon the zoning vicinity map.

The Petitioners also contend that the Property is peculiar or unique because of its topography - i.e., that the Property rises two feet from the rear of the house to the rear lot line. The Petitioners have provided no evidence, however, as to whether other lots in the area share this condition. They have therefore failed to meet their burden to show that the topography is peculiar or unique to this Property.

Even if we were to find that the size, narrowness or topography of the Property is a unique physical condition of the land, we nevertheless cannot conclude from the evidence before us that any of these conditions result in "practical difficulty" in complying with the setback requirements. In order to prove that a "practical difficulty" exists, the Petitioners must show that the setback restrictions "would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restriction unnecessarily burdensome." Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220 (1974); Red Roof Inns, Inc. v Peoples=s Counsel for Baltimore County, 96 Md. App. 219, 624 A.2d 1281 (1993). It is not enough for an applicant to demonstrate that his or her proposal, if allowed, would be suitable or desirable, would do no harm, or would be convenient for the applicant. See Kennerly v. Mayor of Baltimore, 247 Md. 601, 606-07, 233 A.2d 800 (1967).

In this case, the Petitioners' site plan (Exhibit 4) indicates that, despite the size and shape of the lot, there is still ample room within the building envelope of the Property's rear yard to either relocate the garage or construct a new building for use as a guest house. The rise in the Property's topography should not practically impede construction, as structures are routinely built on sloping ground (as evidenced by the location of the existing garage structure on the same sloping ground).

While we recognize that such a venture may be a greater financial undertaking than if the Petitioners were allowed to simply make use of the existing garage building at its present location, we may not take the cost of the work into consideration. "Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances [of the land], none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program." Cromwell v. Ward, 102 Md. App. 691, 715, 651 A.2d 424 (1995), *quoting*

Xanthos v. Board of Adjustment, 685 P.2d 1032, 1036-37 (Utah 1984).

“It follows that the unnecessary hardship . . . must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance . . . . Reviewing a wide variety of variance applications based upon reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship.” 3 Robert M. Anderson, *American Law of Zoning* § 18.30 (2d ed.)

In this case, we find that any practical difficulty in complying with the setback requirements of the Zoning Ordinance is personal to the Petitioners and does not relate to the land itself. As stated above, the siting of a structure on a lot does not create a zoning reason for the grant of variance. See Umerly v. People’s Counsel, 108 Md. App. 497, 506 (1996), *citing* North v. St. Mary’s County, 99 Md. App. 502, 514 (1994).

Consequently, the petition does not meet the requirements of Section 59-G-3.1(a).

(D) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Petitioners have not provided sufficient evidence that the variances requested will not be detrimental to the use and enjoyment of adjoining or neighboring properties. If the variances are granted, the Petitioners propose to change the use of the existing structure from a relatively passive one - that of a garage for the storage of vehicles and other household equipment – to a more intense dwelling use. This use will most assuredly have a greater detrimental impact on the use and enjoyment of adjoining properties. The Petitioners have failed to provide evidence of the extent of the proposed use of the guest house or the proximity of the neighboring homes. Nor have they proposed any type of landscape screening or buffering to mitigate the potential detrimental effects of the proposed guest house. Absent such evidence, we cannot find that the variances will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

Consequently, the petition does not meet the requirements of Sections 59-G-1.3(a) and (d); the Board need not consider the other requirements of that

section for the grant of a variance. Accordingly, the requested variances to reduce the required ten (10) foot setbacks from the rear and side lot lines to 1.5 feet and 3.5 feet, respectively, for an existing garage is denied.

The Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Member Louise L. Mayer, seconded by Vice Chairman Donna L. Barron, and with Member Allison I. Fultz, Member Angelo M. Caputo, and Chairman Donald H. Spence, Jr. in agreement, the Board adopted the foregoing Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 3rd day of February, 2004.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County on accordance with the Maryland Rules of Procedure.